(3) Failure to pay the civil penalty as directed in a Final Agency Order constitutes a violation of that order, subjecting the respondent to an additional penalty as prescribed in Subpart G of this part.

(d) *Request for administrative adjudication.* The respondent may contest the claim and request administrative adjudication pursuant to paragraph (b)(2) of this section. An administrative adjudication is a process to resolve contested claims before the Assistant Administrator, Administrative Law Judge, or Hearing Officer. Once an administrative adjudication option is elected, it is binding on the respondent.

(1) *Contents.* In addition to the general requirements of this section, the reply must be in writing and state the grounds for contesting the claim and must raise any affirmative defenses the respondent intends to assert. Specifically, the reply:

(i) Must admit or deny each separately stated and numbered allegation of violation in the claim. A statement that the person is without sufficient knowledge or information to admit or deny will have the effect of a denial. Any allegation in the claim not specifically denied in the reply is deemed admitted. A mere general denial of the claim is insufficient and may result in a default being entered by the Agency decisionmaker upon motion by the Field Administrator.

(ii) Must include all known affirmative defenses, including those relating to jurisdiction, limitations, and procedure.

(iii) Must state which one of the following options respondent seeks:

(A) To submit written evidence without hearing; or

(B) An informal hearing; or

(C) A formal hearing.

(2) [Reserved]

[70 FR 28481, May 18, 2005]

§ 386.15 [Reserved]

§ 386.16 Action on replies to the Notice of Claim.

(a) *Requests to submit written evidence without a hearing.* Where respondent has elected to submit written evidence in accordance with § 386.14(d)(1)(iii)(A):

(1) Agency Counsel must serve all written evidence and argument in support of the Notice of Claim no later than 60 days following service of respondent's reply. The written evidence and argument must be served on the Assistant Administrator in accordance with §§ 386.6 and 386.7. The submission must include all pleadings, notices, and other filings in the case to date.

(2) Respondent will, not later than 45 days following service of Agency Counsel's written evidence and argument, serve its written evidence and argument on the Assistant Administrator in accordance with §§ 386.6 and 386.7.

(3) Agency Counsel may file a written response to respondent's submission. Any such submission must be filed within 20 days of service of respondent's submission.

(4) All written evidence submitted by the parties must conform to the requirements of § 386.49.

(5) Following submission of evidence and argument as outlined in this section, the Assistant Administrator may issue a Final Agency Order and order based on the evidence and arguments submitted, or may issue any other order as may be necessary to adjudicate the matter.

(b) *Requests for hearing.* (1) If a request for a formal or informal hearing has been filed, the Assistant Administrator will determine whether there exists a dispute of a material fact at issue in the matter. If so, the matter will be set for hearing in accordance with respondent's reply. If it is determined that there does not exist a dispute of a material fact at issue in the matter, the Assistant Administrator may issue a decision based on the written record, or may request the submission of further evidence or argument.

(2) If a respondent requests a formal or informal hearing in its reply, the Field Administrator must serve upon the Assistant Administrator and respondent a notice of consent or objection with a basis to the request within 60 days of service of respondent's reply. Failure to serve an objection within the time allotted may result in referral of the matter to hearing.

(3) *Requests for formal hearing.* Following the filing of an objection with basis, the Field Administrator must